

1 Department of Labor and Industry
2 Board of Personnel Appeals
3 PO Box 201503
4 Helena, MT 59620-1503
5 (406) 444-2718
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8 STATE OF MONTANA
9 BEFORE THE BOARD OF PERSONNEL APPEALS

10
11 IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 26-2010

12	TEAMSTERS LOCAL #2,)	
13	Complainant,)	
14	-vs-)	INVESTIGATIVE REPORT
15)	AND
16	CITY OF BOZEMAN,)	NOTICE OF INTENT TO DISMISS
17	Defendant,)	
18)	
19)	
20)	
21)	

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24 **I. Introduction**

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26 On February 5, 2010, Teamsters Local #2, hereinafter Local #2 or Union, filed an unfair
27 labor practice charge with the Board of Personnel Appeals alleging that the City of
28 Bozeman committed an unfair labor practice when City Manager, Chris Kukulski,
29 attempted to coerce public opinion and bargaining unit member opinions. The nature of
30 the charge is a violation of 39-31-401(1) MCA. The charge was filed on behalf of the
31 Union by Jim Stone, Teamsters Business Representative. Cynthia Walker, attorney at
32 law, represents the City of Bozeman, hereinafter the City, in this matter and has
33 responded on its behalf denying that any unfair labor practice was committed.
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36 John Andrew was assigned by the Board to investigate the charge and has reviewed
37 the information submitted by the parties and communicated with them as necessary in
38 the course of the investigation.
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40 **II. Findings and Discussion**

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42 This case concerns the bargaining between Local #2 and the City for a successor
43 agreement to a collective bargaining agreement which expired on June 30, 2009. The
44 contract covers a variety of positions including employees in such divisions as streets,
45 parks and cemetery, water and wastewater, facilities, and solid waste. The parties
46 began bargaining for the successor agreement on May 21, 2009. In December of 2009
47 the parties reached agreement and a contract is currently in place.
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1 Throughout the spring, summer and fall of 2009 the City and Local #2 met and
2 bargained for a new agreement. In September, November and December of 2009 the
3 parties were assisted by a Board of Personnel Appeals mediator as they addressed
4 issues of compensation, filling vacancies and grievances. In December negotiations
5 were stymied and on December 4, 2009, the Union served notice on the City that it had
6 rejected the last contract offer and the membership had authorized a strike.
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9 While the negotiations were ongoing City Manager Kukulski appeared as a guest on a
10 local morning radio talk show. City Manager Kukulski's appearance occurred each
11 week in this open radio forum where he could discuss issues of concern and interest to
12 the citizens of Bozeman.
13

14 Suffice to say, when City Manager Kukulski appeared on the December 9, 2009, radio
15 show the word was on the street that a strike was a possibility so the calls that day
16 concerned caller opinions of the situation and the potential of a strike. The contention of
17 Local #2 is that on this radio appearance, as well as on previous appearances, City
18 Manager Kukulski engaged in behavior that was detrimental to the bargaining
19 relationship between the City and the Union; detrimental to the relationship between the
20 Union and bargaining unit members; and coercive in such a manner as to interfere with
21 rights guaranteed to employees under 39-31-201.
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24 Had City Manager Kukulski gone on the airwaves in a specific program whose specific
25 topic was the state of negotiations between Local #2 and the City his appearance would
26 be viewed with greater rigor than would an appearance on a program where he
27 regularly appeared to discuss topics of interest to the public. This was not some sort of
28 appearance set by a management official for the purpose of bargaining away from the
29 table or in some manner bypassing the exclusive agent to appeal directly to its
30 members. This appearance was part of a longstanding arrangement with the radio
31 station. Thus, the December 9, 2009, appearance in and of itself is not overly suspect.
32 Rather, the question is whether what was said was suspect and/or did what was said
33 interfere with rights guaranteed under collective bargaining laws?
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36 In addressing this question the investigator has obtained a recording of the broadcast in
37 question and after reviewing it carefully cannot disagree with how counsel for the City
38 has characterized the statements made by the City Manager, the program host, and the
39 callers to the show. There were no threats that workers would be replaced. Rather
40 there was discussion of how the City would respond to such things as snow and
41 garbage removal should a strike actually happen – the contingency plans of the City in
42 the event of a job action. It is clear that the City Manager not only was careful in what
43 he said, but he also recognized that it would be improper for him to engage in
44 negotiations away from the table. City Manager Kukulski stated facts and potential
45 ways the situation would be handled by the City should a strike actually occur, but he
46 always held out the prospect that agreement would be reached short of a strike. If
47 anything, the opinions he expressed, rightly or wrongly, were as much in frustration with
48 his view of the labor laws of Montana rather than with the Union or with its members.
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1 In cases of this nature, the burden is on the Union to show that the City engaged in
2 something beyond First Amendment rights of free speech. In assessing whether this
3 occurred the Board of Personnel Appeals has looked to federal precedent, specifically
4 NLRB v. Gissel Packing Co., 395 US 575, 71 LRRM 2481 (1969). In looking to Gissel
5 the Board adopted the view that for employer statements to be unlawful interference, or
6 undermining union support, it must be demonstrated that the employer statement or
7 statements were not objective in nature or they were untruthful. Moreover, any
8 predictions made by an employer as to likely consequences of union actions in the
9 context of such statements, must be "based on objective fact, and be demonstrably
10 probable." See ULP #25-77, Teamsters Local Union No. 53 v. Gallatin County
11 Commissioners. Also see ULP #25-2000, Anaconda Police Protective Association v.
12 Anaconda-Deer Lodge County and Anaconda-Deer Lodge County v. Anaconda Police
13 Protective Association. The recording of the radio program does not rise to the level of
14 an unfair labor practice. At best it may raise some concerns surrounding questions of
15 the extent of the support within the Union to the strike, but it does not rise to the level of
16 interference or coercion. Nor for that matter do the statements attributed to Public
17 Works Director Arkell in a newspaper article as in the context of contingency planning,
18 using contractors to perform essential services is one of several options that could be
19 used by the City to carry out essential services. Most importantly, in all of this, the City
20 and the Union continued to bargain with one another. They did successfully resolve
21 their contract at the table, short of a strike - strong evidence that the totality of conduct
22 by the City in terms of what is offered by the Union did not constitute bad faith
23 bargaining. All things being considered, the Union did not offer substantial evidence to
24 warrant an evidentiary hearing on the merits of the complaint.
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28 **III. Recommended Order**

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30 It is hereby recommended that Unfair Labor Practice Charge 16-2010 be dismissed.
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33 DATED this 7th day of April 2010.
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37 BOARD OF PERSONNEL APPEALS
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40 By: _____
41 John Andrew
42 Investigator
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45 NOTICE

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47 Pursuant to 39-31-405 (2) MCA, if a finding of no probable merit is made by an agent of
48 the Board a Notice of Intent to Dismiss is to be issued. The Notice of Intent to Dismiss
49 may be appealed to the Board. The appeal must be in writing and must be made within
50 10 days of receipt of the Notice of Intent to Dismiss. The appeal is to be filed with the

Board at P.O. 201503, Helena, MT 59620-1503. If an appeal is not filed the decision to dismiss becomes a final order of the Board.

CERTIFICATE OF MAILING

I, _____, do hereby certify that a true and correct copy of this document was mailed to the following on the _____ day of _____ 2010, postage paid and addressed as follows:

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